

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED MAR 16 2015 CLERK, U.S. DISTRICT COURT By _____ Deputy

ALBERTO FARIAS
Plaintiff.

v.

WEST ASSET
MANAGEMENT, INC.
Defendant.

CIVIL ACTION NO. _____

4-15CV-193-0

TRIAL BY JURY DEMANDED

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Alberto Farias complains of West Asset Management, Inc. Defendant, and for cause of action would respectfully show as follows:

NATURE OF ACTION

1. This is an action for damages brought by individual, Plaintiff Alberto Farias against Defendant West Asset Management, Inc. for violations of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii).
2. Plaintiff contends that the Defendant has violated such laws by calling Plaintiffs cellular telephone using an automatic telephone dialing system as defined by the Telephone Consumer Protection Act, 47 U.S.C. §227(a)(1) without express consent.

JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under 47 U.S.C. §227(b)(3).
4. This Court has jurisdiction over Defendant pursuant to 28 U.S.C. §1391b because Defendant engages in business within this state, to wit debt collection.
5. Venue is proper pursuant to 28 U.S.C. §1391b and 47 U.S.C. §227(b)(3).
6. Venue in the Northern District of Texas, Fort Worth Division is proper in that the Plaintiff resides in State of Texas, Tarrant County, City of Fort Worth, the Defendant transacts business here, and the conduct complained of occurred here.
7. All conditions precedent to the bringing of this action, have been performed.

PARTIES

8. The Plaintiff in this lawsuit is Alberto Farias, a natural person and a citizen of Tarrant County, Texas.
9. Defendant in this lawsuit is West Asset Management, Inc. (herein after “West Asset”) a debt collection company with principal office at 11808 Miracle Hills Dr., Omaha, NE 68154.
10. West Asset may be served with process by serving its registered agent for service of process: Corporation Service Company d/b/a CSC Lawyers, Inco, 211 E. 7th Street, Suite 620, Austin, TX 78701.
11. West Asset is a “debt collector” as defined by 15 U.S.C. § 1692a(6).
12. West Asset is in the business of collecting consumer debts using the mails and telephone and regularly collects, or attempts to collect, consumer debts owed, or alleged to be owed, to another person.

FACTUAL ALLEGATIONS

13. The telephone number (682) 208-4723 is assigned to a cellular telephone belonging to the Plaintiff Alberto Farias.
14. On or about September 25, 2014, West Asset began calling the wireless cellular phone number (682) 208-4723 from telephone numbers (682) 237-8379, (682) 237-1259 and (682) 237-6302 which are numbers known to be used by West Asset in their debt collection operations.
15. **See Exhibit A**, West Asset called the cellular telephone number (682) 208-4723 on the following dates and times:
- | | |
|-------------------------------------|------------------------------------|
| 1. September 25, 2014 at 02:10 p.m. | 8. October 04, 2014 at 10:57 a.m. |
| 2. September 26, 2014 at 01:53 p.m. | 9. October 06, 2014 at 03:28 p.m. |
| 3. September 29, 2014 at 04:06 p.m. | 10. October 06, 2014 at 06:42 p.m. |
| 4. September 29, 2014 at 04:47 p.m. | 11. October 07, 2014 at 02:34 p.m. |
| 5. September 30, 2014 at 05:03 p.m. | 12. October 08, 2014 at 04:15 p.m. |
| 6. October 01, 2014 at 02:24 p.m. | 13. October 21, 2014 at 01:38 p.m. |
| 7. October 02, 2014 at 02:00 p.m. | 14. October 22, 2014 at 11:07 a.m. |
16. Refer to ¶15, West Asset used an automatic telephone dialing system to dial the wireless cellular phone (682) 208-4723 as defined by the Telephone Consumer Protection Act, 47 U.S.C. §227(a)(1).
17. Refer to ¶15, West Asset called the cellular phone (682) 208-4723 for a non-emergency purpose.
18. Plaintiff has no prior or present established relationship with West Asset.
19. Plaintiff has no contractual obligation to pay West Asset any alleged consumer debt.

20. On February 25, 2015, Plaintiff sent a letter informing West Asset said actions were a violation of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii). This was in an effort to amicably resolve the matter prior to litigation.
21. All violations complained of herein occurred within the statute of limitations of the applicable federal statutes.

COUNT I

VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. §227(b)(1)(A) BY DEFENDANT WEST ASSET MANAGEMENT, INC.

22. Paragraphs 1 through 21 are re-alleged as though fully set forth herein.
23. Plaintiff and West Asset do not have an established business relationship within the meaning of 47 U.S.C. §227(a)(2).
24. West Asset called Plaintiff's cellular telephone using an "automatic telephone dialing system" within the meaning of 47 U.S.C. §227(a)(1).
25. 47 U.S.C. §227(b)(1)(A) which states in part;
- (b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—
- (1) PROHIBITIONS.—It shall be *unlawful for any person* within the United States, or any person outside the United States if the recipient is within the United States—
- (A) *to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—*
26. In each telephone communication referenced in ¶15, West Asset has demonstrated willful or knowing non-compliance with 47 U.S.C. § 227 (b)(1)(A) by using an automatic telephone dialing system or used a telephone dialing system that has the *capacity* to automatically call the Plaintiff's cellular telephone number (682) 208-4723, which is

assigned to a cellular telephone service *with no prior express consent* and for *no emergency purpose*.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- d) Awarding such other and further relief as the Court may deem just and proper.

COUNT II

**VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C.
§227(b)(1)(A)(iii) BY DEFENDANT WEST ASSET MANAGEMENT, INC.**

27. Plaintiff alleges and incorporates the information in paragraphs 1 through 26.

28. 47 U.S.C. §227(b)(1)(A)(iii) which states in part;

(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

29. In each telephone communication referenced in ¶15, West Asset has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A)(iii) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the *capacity* to automatically call the Plaintiff's number (682) 208-4723, which is *assigned to a cellular telephone service*.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

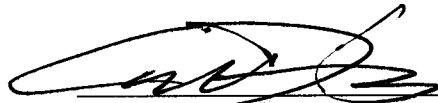
- e) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- f) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- g) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- h) Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff is entitled to and hereby demands trial by jury.

Dated: March 12, 2015

Respectfully Submitted,



Alberto Farias
1413 Clinton Avenue
Fort Worth, TX 76164
(817) 705-5655
fariasalberto@outlook.com

Missed Calls
[3x]Unregistered
16822378379

Date : 09/25/2014
Time : 02:10 pm

Missed Calls
[3x]Unregistered
16822378379

Date : 09/26/2014
Time : 01:53 pm

Missed Calls
[3x]Unregistered
16822378379

Date : 09/29/2014
Time : 04:06 pm

Date : 09/26/2014

Missed Calls
Unregistered
16822376302

Date : 09/29/2014
Time : 04:47 pm

Missed Calls
[2x]Unregistered
16822378379

Date : 09/30/2014
Time : 05:03 pm

Missed Calls
[2x]Unregistered
16822378379

Date : 10/01/2014
Time : 02:24 pm

Missed Calls
Unregistered
16822371259

Date : 10/02/2014
Time : 02:00 pm

Missed Calls
Unregistered
16822376302

Date : 10/04/2014
Time : 10:57 am

Missed Calls
[2x]Unregistered
16822378379

Date : 10/06/2014
Time : 03:28 pm


Exhibit A

 **Missed Calls**
Unregistered
 **16822378379**

Date : 10/08/2014
Time : 04:15 pm

 **Missed Calls**
[2x]Unregistered
 **16822378379**

Date : 10/21/2014
Time : 01:38 pm

 **Missed Calls**
[2x]Unregistered
 **16822378379**

Date : 10/22/2014
Time : 11:07 am

 **Missed Calls**
[2x]Unregistered
 **16822378379**

Date : 10/06/2014
Time : 06:42 pm

 **Missed Calls**
Unregistered
 **16822371259**

Date : 10/07/2014
Time : 02:34 pm

 **Missed Calls**
Unregistered
 **16822378379**

Date : 10/08/2014
Time : 04:15 pm

Exhibit A